IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : 22.8.2006.

Dharambir and others

....Appellants

Versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. R.S. Cheema, Sr. Advocate, assisted by
Mr. Pawan Girdhar, Advocate,
for convicted appellants.

Mr. Sunil Katyal, Deputy Advocate General, Haryana.

Judgment

The six appellants stand convicted and sentenced below, vide judgment/order of learned Additional Sessions Judge, Rohtak dated 21.5.1998/25.5.1998:

Appellant Dharambir son of Kartar Singh:

Convicted under Section 302 IPC substantively and sentenced to imprisonment for life and a fine of Rs.2000/-, in default thereof to further undergo R.I. for

six months.

Appellants:
1. Dharambir son of Kartar,
2. Kartar Singh son of Bhaiy Ram,
3. Rajbir son of Kartar Singh,
4. Kuldip son of Kartar Singh,
5. Dalel Singh son of Bhaiy Ram,
6. Rajesh son of Dalel Singh.

All the six appellants are convicted under Section 148 IPC and have been sentenced to undergo R.I. for one year and a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for three months.

Under Sections 323/149 IPC R.I. for six months and a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. For three months.

The substantive sentences of each appellants are ordered to run concurrently.

Aggrieved by the impugned judgment of conviction and sentence, they have preferred the instant appeal.

The deceased in this case is Suresh son of Balbir aged 25 years. He is real brother of Yudhvir Singh PW3, the first informant, an injured and Bijender PW4 the other injured. The occurrence is of 17th October, 1995 at 6.30 P.M. in Village Kaloi in front of the house of Rajbir appellant. This village falls within the jurisdiction of Police Station Sadar, Rohtak and is at a distance of 12 K.Ms. Suresh died in the village itself within a short span of the occurrence. Yudhvir

Singh PW3 thereafter reached Police Station Sadar, Rohtak and his statement was recorded by ASI Om Parkash PW7 which was complete at 2.55 A.M. A formal FIR Ex.PC was consequently recorded under Sections 148, 149, 323, 302 IPC. Special report was sent to the Ilaqa Magistrate (Judicial Magistrate Ist Class), Rohtak through constable Chander Bhan PW1 (tendered his affidavit Ex.PA) which reached the residence of the concerned officer at 5.15 A.M. on 18.10.1995.

Yudhvir Singh alleges that on 17.10.1995 at about 6.30 P.M. he was returning from his Gitwar and when he reached the street in front of the house of Rajbir appellant, all the appellants, who are his uncles and cousins armed with Moosal and Lathis came there and intercepted him. Kuldeep Singh appellant asked him as to why ten days ago he had slapped their father to which he replied that his uncle Kartar Singh (appellant) was setting on fire their (complainant's) dry fodder bundles of Jawar and did not desist despite being prevented and at that time they had a scuffle. Dalel Singh appellant said that the plot in which the fodder bundles had been stacked did not belong to his father (complainant's father) and it was a joint plot of all of them. It is then alleged that Kuldeep appellant said that since he (Yudhvir complainant) had slapped his father, he would be taught how destruction is caused. Thereafter, all the accused started raining Lathi blows on him. A specific role is ascribed to them alleging that Dalel, Kartar and Rajbir appellants inflicted lathi blows on his hands and

foot respectively and when his noise attracted his brothers Bijender, Suresh sons of deceased and Ishwar Singh, Rajesh and Kuldeep appellants inflicted lathi blows on Bijender whereas Dharambir appellant inflicted a Moosal blow on the head on receipt of which Suresh fell down and became unconscious. Many villagers had reached in the mean-time and all the accused managed to flee away. Suresh was taken by his brothers to their house where he succumbed to his injury. It is further alleged that out of fear the complainant side could not venture to go to the Police Station immediately and finding an opportunity Yudhvir came to the police station and lodged the report.

ASI Om Parkash PW7 took up the investigation, went to village Kaloi and on the pointing out of the place of occurrence, prepared rough site plan Ex.PN with correct marginal notes. Thereafter, he went to the house where dead-body of Suresh was lying, conducted inquest proceedings on the dead-body and prepared inquest report Ex.PJ and sent the dead-body for autopsy. He also recorded the statements of witnesses. Bijender and Yudhvir were got medico-legally examined on 18.10.1995 itself. On 20.10.1995 all the appellants were arrested by this witness and on 21.10.1995 during interrogation Dharambir appellant suffered a disclosure statement, pursuant to that got recovered a Moosal Ex.P1 from a concealed place. Disclosure statement is Ex.PO whereas recovery memo vide which Moosal was taken into custody is Ex.PE. The said Moosal was

produced before the concerned doctor for seeking his opinion vide application Ex.PK who opined vide Ex.PK/1 that the injury on the head of Suresh was possible by Moosal. It is worth mentioning that Lathis were not recovered during the investigation. After the completion of the investigation, all the appellants were challaned.

The charge-sheet in the case indicates that Dharambir was charged under Section 302 IPC. He was charged along with his other five co-accused under Section 148 and 323 IPC read with Section 149 IPC. All the other five appellants were charged under Sections 148 IPC, 323 read with Section 149 IPC and 302 read with Section 149 IPC. It needs mentioning here that may be the specific order is not passed by the learned trial Court with regard to acquittal of Kartar Singh, Rajbir, Kuldeep, Dalel and Rajesh for the charge framed against them under Section 302/149 IPC, but the learned trial Court has observed in the impugned judgment that in the case in hand Section 149 IPC regarding commission of murder of Suresh is not applicable and, therefore, aforesaid five appellants cannot be vicariously convicted for the murder of Suresh. This technically amounts to their acquittal for the aforesaid charge. At the cost of repetition it may be stated here that only Dharambir has been convicted under Section 302 IPC substantively whereas the other appellants are convicted along with Dharambir under Section 148 IPC and 323 IPC read with Section 149 IPC. Admittedly, State of Haryana has not preferred any appeal against the acquittal of five persons for

the charge framed against them under Section 302/149 IPC.

The main witnesses of the prosecution case are as under:-

In order to prove medical evidence, prosecution relies upon the statement of Dr. Kulbir Singh PW6 who on 18.10.1995 while posted as Medical Officer, Civil Hospital, Rohtak had conducted the autopsy on the dead body of Suresh and found the following injuries:-

> "1. There was a lacerated bone deep wound 8 x 1 cm in size longitudinally placed on the left parietal region 1cm from mid line, 13 cm on the left pinna, 8 cm from the root of nose. Clotted blood was present all around; ecchymoses present in layers of scalp. Rigor mortis was present in all limbs. Postmortem staining was present on the back.

On dissection he noticed a fracture of 7 CM long in the left temporo-parietal region starting just behind the frontal bone near the midline. Extradural and subdural haemotoma was present on the left side of scalp. In his opinion, the cause of death was coma as a result of head injury which was antemortem in nature and sufficient to cause death in normal course. He proved Ex.PH, the copy of postmortem report and the police application Ex.PH/1. In cross-examination he deposed that possibility of the injury on the person of the deceased being caused by forceful blow of lathi also cannot be ruled out. He has also stated that possibility of the said injury being

caused by a brickbat can also not be ruled out. It has further come in his cross-examination that head injury which is of the width of 1 cm is not possible with Moosal Ex.P1 which is having circumference of 8" and states that the width of the wound in such type of situation would be more.

Dr. A.S. Rathi PW8 medical officer of Casualty of PGIMS, Rohtak had examined Bijender Singh PW on 18.10.1995 at 11.25 A.M. and found following two injuries:-

1. 1x1 cm lacerated wound on frontal bone. Blood crest present.
2. 2x.5 cm contusion black in colour on left hand.

In his opinion, both the injuries were simple in nature caused by blunt weapon within the duration of 24 hours. He proved MLR Ex.PU. In his cross-examination he states that on the same day at 8.15 A.M. he had medico-legally examined Dharambir appellant who was brought by his brother and found the following injuries on his person:-

1. 6 cm long incised wound on right parietal eminence, bone exposed.
2. Bruise 2 x 1 cm at right shoulder.

Injury No.1 was kept for surgeon opinion and injury no.2 was declared as simple. In his opinion injury No.1 was caused by a sharp edged weapon and injury no.2 by a blunt weapon. He proved the MLR of Dharambir appellant as Ex.DB.

Dr. Gulshan Arora PW9 had medico-legally examined Yudhvir PW on 18.10.1995 at 6.00 A.M. and found the following injuries on his person:-

1. Lacerated wound of 3 cm x 2 cm galea deep over right fronto parietal region, 4 cm from hair line. Clotted blood was present all over the wound. Advised surgeon's opinion.
2. Swelling right shoulder with tenderness positive advised Ortho. Surgeon's opinion.
3. Lacerated wound of 2 cm x 1 cm over dorsum of right thumb. Advised Ortho Surgeon's opinion.
4. Red abrasion of 2 cm x 1 cm over posterior aspect of middle of left fore-arm. Advised Ortho-Surgeon's opinion.
5. Reddish abrasion of 1 cm x 1 cm over dorsum of right hand.
6. Lacerated wound of 1.5 cm x 1 cm skin deep over right skin. Advised Ortho Surgeon's opinion.

He has proved MLR Ex.PV. Ultimately, vide opinion Ex.PX/1 all the injuries on the person of Yudhvir were declared as simple in nature.

Eye version account:

The prosecution is relying upon the statement of two injured eye witnesses, namely, Yudhvir (PW3) and Bijender (PW4) who are real brothers of the deceased. Both these witnesses have reiterated the prosecution case as depicted in Ex.PC.

Investigation:

Investigation conducted by ASI Om Parkash (PW7) is already depicted in the preceding paras and we do not feel the necessity of reproducing the same.

Ishwar Singh the other eye-witness to the occurrence has been given up by the prosecution. FSL report tendered is Ex.PG and PG/1. The other witnessers were also given up as unnecessary.

The defence set up by the appellants as emerging from the statement of Dharambir appellant recorded under Section 313 Cr.P.C. is that on 17.10.1995 at 4.00 P.M. Yudhvir PW had kept Pullies of fodder belonging to Pandit Dharamvir in the plot of father of Dharambir and on objection Yudhvir flared up and abused Dharambir appellant. This resulted into altercation during which Dharambir appellant gave a slap on his face. Yudhvir had threatened Dharambir to teach him a lesson. On the date of occurrence at 7.00 P.M. Yudhvir armed with a pharsa, Bijender armed with a lathi, Suresh, since deceased, armed with Jaili having iron handle and iron prongs and Balbir PW empty handed followed by their ladies Saroj and Santosh came on the Chabutra in front of the house of Rajbir appellant. On the exhortation of Balbir Singh PW, Yudhvir PW gave a pharsa blow on the head of Dharambir appellant and in order to defend himself Dharambir picked up a lathi lying outside the house of Rajbir and gave a blow to Yudhvir. Thereafter, Suresh, since deceased, gave two jaili blows lathiwise to Dharambir on his back

and Santosh and Saroj hurled bricks. Suresh was hit in the head by Bijender PW when he was wielding lathi against Dharambir appellant. All the other appellants have also toed the defence of Dharambir appellant.

In defence the appellants have produced orders Ex.DC, DD, DE and DF showing that Yudhvir, Bijender, Balbir, Santosh and Saroj were charged under Sections 148, 506, 307, 323 and 149 IPC.

We have heard Mr. R.S. Cheema, Senior Advocate, learned counsel for all the appellants assisted by Shri Pawan Girdhar Advocate as well as Mr. Sunil Katyal, Deputy Advocate General. With the assistance of learned counsel for both the sides we have gone through the records of the instant case very minutely.

Mr. Cheema has joined issue only on one aspect of the prosecution case submitting that even if it is taken as it is in its totality, conviction of Dharambir appellant for the offence punishable under Section 302 IPC is not sustainable and he at the most might be convicted under Section 304 Part-I or 304 Part-II IPC. Developing his arguments he submits that the very case set up by the prosecution is that initially an altercation had started with Yudhvir PW who was coming back from his Gitwar. Suresh, since deceased, had come to the scene of crime after hearing the noise of Yudhvir. He, in fact, was an intervener and received one injury at the hands of Dharambir appellant. The learned counsel strengthening his arguments contends further that the motive projected by the prosecution is of slapping of

Kartar appellant by Yudhvir PW ten days back and prior to that Kartar had attempted to set on fire the dry fodder bundles of complainant side. From this, the learned counsel has made an attempt to show that even if the case of the prosecution is stretched to some extent in its favour, at the most it was a case of common object of thrashing Yudhvir who happened to be in front of house of Rajbir and even not qua Suresh who appeared at the scene after Yudhvir had raised a noise (Raula).

Mr. Cheema fairly contends that although on the basis of his aforesaid submissions the case of the prosecution can very well be segregated with regard to the applicability of Section 148 IPC and in turn Section 149 IPC also, yet he does not assail the conviction of the other five appellants convicted under Section 148 IPC and under section 323 read with Section 149 IPC especially when State of Haryana has not preferred any appeal against the acquittal for the charge of Section 302 IPC and sets store qua Dharambir appellant only with regard to Section 302 IPC.

Mr. Cheema then contends that another weakness of the prosecution is that the injury on the person of Dharambir is not explained by the prosecution witnesses. He while taking us through the statement of Dr. A.S. Rathi PW8 who had medico-legally examined Dharambir appellant on 18.10.95, submits that the injury on the head of Dharambir is an incised wound exposing the bone caused by a sharp edged weapon. This injury cannot be self suffered.

May be the other injury on the person of Dharambir described as bruise of 2 cm x 1 cm at right shoulder, is possible by a friendly hand but main incised wound on the head is not possible in that manner itself. Our attention has been drawn to the cross-examination of Bijender PW4 wherein he has categorically stated that they had not taken any weapon along with them while going to the spot on hearing the noise. The case of Yudhvir is that he was empty handed. From this, Mr. Cheema develops that an injury on the vital part (head) of Dharambir that too caused by a sharp edged weapon is being intentionally suppressed by the complainant side and this rather shows that a true version of the occurrence is not being placed before the Court.

According to the learned counsel, another fact which is very pertinent in this case is that Dharambir appellant and Suresh (deceased) are receiving one injury each but the weapons are different. Both the injuries are on the head and when the case of the prosecution is appreciated in its entirety, it can comfortably be inferred that Dharambir appellant had no intention viz to commit murder of Suresh who admittedly appeared at the scene of occurrence when Yudhvir was being assaulted. Therefore, conviction of Dharambir under Section 302 IPC recorded by the trial Court is not sustainable.

Mr. Cheema further contends that may be the trial Court has acquitted complainant side and there being no appeal from the

side of the appellants but the fact remains that five persons from the side of complainant were charged for the offences punishable under Sections 148, 307, 506, 323 read with Section 149 IPC as is clear from Ex.DD, DE & DF respectively. Even otherwise acquittal of the complainant side would not be of any help to the prosecution as the evidence of one case cannot be imported in other case and every case is to be decided on its own facts.

Mr. Cheema lastly submits that although the impugned judgment of conviction is not assailed by him on the point of Section 148 IPC, yet the appellants deserve a lenient view with regard to quantum of sentence may be from one year to six months as already awarded to them under Sections 323/149 IPC.

Repudiating the submissions adduced by Mr. Cheema, Mr. Katyal states that may be the State has not preferred any appeal against acquitted appellants for the charge of offence punishable under Section 302 read with Section 149 IPC yet Dharambir appellant at least has no escape as the injury attributed to him falls within the ambit of Section 302 IPC as he was armed with a Moosal which is a heavy weight lathi and used it with full force while wielding the same on the head of Suresh which ultimately proved to be fatal within a few minutes. This injury has also resulted into fracture and, therefore, intention of appellant Dharambir viz to cause the murder can be inferred from that angle also. Therefore, his conviction under Section 302 IPC substantively deserves to be maintained.

After giving our thoughtful consideration to each aspect of the case on the basis of the evidence on record, we find force in the submissions advanced by Mr. Cheema.

Admittedly, both the sides are very closely related to each other. A bickering was going on on account of a previous altercation, may be not of that magnitude. It is commonly noticed in the villages that even a very trivial matter gets flared up to the extent of taking the life of some one from either side. Otherwise also motive pales into insignificance when both the sides are admitting the occurrence in one way or the other and some of them have also received injuries. The case in hand is being appreciated from that angle.

We are very much conscious of the fact that from the side of appellant only Dharambir appellant has received two injuries whereas from the side of complainant Suresh (since deceased), Yudhvir, the first informant and Bijender Singh PW (two brothers of Suresh) are injured. Suresh has received only one injury at the hands of Dharambir appellant and the other injuries on the person of Bijender and Yudhvir have turned out to be simple in nature. No doubt, Yudhvir has received six injuries at the hands of the complainant party, but if the entire occurrence is visualized in totality of its facts on the basis of the scaled plan where the houses of both the sides are shown, one can make out that an altercation had initially ensued between Yudhvir and the appellant side when he (Yudhvir)

happened to be near the house of Rajbir where he was assaulted. Subsequently, Suresh reached the spot along with Bijender and Ishwar (not examined) and they too received injuries. We may state here that in order to bring the case of the prosecution within the mischief of Section 148 IPC, some improvement has been made by one of the prosecution witnesses when he states that all the accused were already sitting on a cot in front of the house of Rajbir armed with weapons but this is some what contrary to the scaled plan where point 'A' (place of occurrence) is shown at some distance. It is near a pond (in rural parlance it is known as Johar). We, however, refrain ourselves from commenting on this aspect further as Mr. Cheema has not assailed the impugned judgment with regard to the applicability of Section 148 IPC or in turn Section 149 IPC that seriously and his primary argument revolves round Dharambir appellant only that too for diluting the main offence.

In the aforesaid factual backdrop receiving only one injury by Suresh (since deceased) may be on his head, that too when he appeared at the scene after Yudhvir raised an alarm, in our view, takes out the intention part from the bosom of Dharambir appellant especially when he has also received two injuries in this occurrence at least one injury (injury No.1) which is on the head caused by a sharp edged weapon, cannot be just overlooked or ignored by us even by giving a margin to the complainant side for not explaining the injuries on the person of accused. After considering all the facts collectively

in the right perspective, we come to a definite conclusion that Dharambir appellant had no intention to cause murder of Suresh may be the injury attributed to him proved fatal within a short span of occurrence.

We are conscious of the fact that there cannot be any hard and fast rule to hold that a single blow on the vital part would not fall within the definition of Section 300 and it should always fall within the ambit of Section 304 (Part-I) or 304 (Part-II) IPC. But having considered the entire facts and circumstances of the present case and drawing the subtle line of distinction between Sections 299 IPC and 300 IPC and keeping in view the weapon of offence (Moosal), usually used for thrashing paddy by a villager and the medical evidence adduced, the present case in our view would fall within the mischief of Section 304 Part-I IPC and not under Section 302 IPC as recorded by the trial Court. Therefore, the conviction of Dharambir appellant under Section 302 IPC substantively deserves to be disturbed and instead he is liable to be convicted under Section 304 Part-I IPC. Ordered accordingly. His sentence of imprisonment for life as already imposed is hereby set-aside and instead he shall now undergo rigorous imprisonment for eight years only. However, the sentence of fine of Rs.2000/- and the sentence for default clause as recorded by the trial court shall remain the same.

Since the conviction of other five appellants, namely, Kartar Singh, Rajbir, Kuldeep, Dalel and Rajesh as recorded by the

trial Court, is not assailed by Mr. Cheema, we reaffirm the same as it is, except that we allow the prayer made by Mr. Cheema with regard to reduction in quantum of sentence qua section 148 IPC of all the appellants and reduce the same from one year to six months. Ordered accordingly. The sentence of six months for other charge under Section 323/149 IPC, however, shall remain unaltered. So would be the position with regard to sentence for default clause on both the counts viz Section 148 IPC & 323/149 IPC. As already observed by the trial Court, substantive sentences shall, however, run concurrently.

The instant appeal is partly allowed in the aforesaid terms.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 22, 2006
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